

HOUSE BILL 2433

By McDonald

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14; Title 40, Chapter 35 and Title 62, Chapter 9, relative to scrap metal, scrap metal dealers, theft, and criminal trespass.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 9, is amended by deleting the chapter in its entirety and substituting instead the following:

Section 62-9-101. As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of commerce and insurance unless otherwise specified;

(2) "Licensed HVAC Contractor" means a person holding a license from the state board for licensing contractors with a CMC, MC, CMC-C, or MC-C classification;

(3) "Scrap metal" means any ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, including, but not limited to, iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, stainless steel, catalytic converters, or other similar obsolete ferrous or nonferrous metals, but shall not include recyclable aluminum cans; and

(4) "Scrap metal dealer" means a person who buys, exchanges, or deals in scrap metal, or an employee or agent of that dealer who has the express or implied authority to buy, exchange or deal in scrap metal on behalf of the dealer. Section 62-9-102.

(a) Effective October 1, 2008, no scrap metal dealer shall purchase, deal or otherwise engage in the scrap metal business unless the dealer is registered

with the department of commerce and insurance. All registrations hereunder shall expire two (2) years from the date of the registration or the renewal thereof. The commissioner of the department may promulgate and adopt such rules and regulations as are reasonably necessary to carry out the provisions of this chapter. The commissioner shall establish such registration and renewal fees as are adequate to cover the administrative costs associated with the registration program.

(b) Included on each registration and renewal form shall be a section whereby the registrant must declare, under penalty of perjury pursuant to § 39-16-702(a)(3), whether such registrant has ever been convicted of a violation of this chapter or convicted of the criminal offense of theft, burglary or vandalism, where such offense involves scrap metal.

(c) An applicant who has been convicted of a violation of this chapter or has a conviction for the criminal offense of theft, burglary or vandalism, where such offense involves scrap metal, shall be prohibited from registering under this chapter for five (5) years from the date of conviction.

Section 62-9-103.

(a) Except as provided in subsection (b)(2), no scrap metal dealer may purchase or otherwise acquire scrap metal from a person unless that person presents a state or federally issued photo identification card that appears valid on its face to the dealer, and provides a thumbprint as provided in § 62-9-104.

(b)

(1) If a valid state or federally issued photo identification card is presented, the scrap metal dealer shall record the name, sex, height, date of birth, residence address and the photo identification card number of the

person selling the scrap metal; photocopy the photo identification card presented, and maintain this information as part of the transaction record. The scrap metal dealer shall also record the license plate number and make and model of the motor vehicle the seller is driving. If the vehicle is a commercial vehicle, the buyer shall record the name of the business owning or leasing the vehicle.

(2) If the person presenting the scrap metal for sale does not have a state or federally issued photo identification card, the dealer shall require the buyer to present some form of state or federally issued identification, photograph the person and record the information contained on the identification card prior to the transaction being made. Even if a photograph of the buyer is taken, the dealer is prohibited from making the transaction if the buyer does not have, or refuses to present, the required identification.

Section 62-9-104.

(a) Upon copying and recording the photo or other required identification, and the information contained thereon, of the person proposing to sell scrap metal as required in § 62-9-103, the dealer shall also require the person to provide a right thumbprint impression. However, if taking the right thumbprint is not possible, the dealer shall take a fingerprint from the left thumb or another finger and shall identify on the transaction sheet which finger has been used. A thumb or fingerprint taken pursuant to this subsection must be clear and complete and contain no smears or smudges. A thumb or fingerprint taken pursuant to this subsection shall be maintained by the dealer for a period of three (3) years from the date of the scrap metal sale.

(b)

(1) Before purchasing scrap metal from a person, the dealer shall conduct a reasonably diligent inquiry, based upon the seller, type and quantity of metal offered for sale and other circumstances surrounding the transaction, to determine whether the person selling or delivering the scrap metal has a legal right to do so and whether a lawful transaction may be made. If the person presents a bill of sale, receipt or other document indicating that the person is in lawful possession of the scrap metal, or it was otherwise lawfully acquired, the dealer shall photocopy such document and maintain it with the transaction information otherwise required by this section.

(2) In addition to identifying information required to be maintained by a dealer pursuant to § 62-9-103, the dealer shall also maintain transaction records of each purchase by date of purchase, name of purchaser, the amount paid for the scrap metal and the weight of each kind of scrap metal. A detailed description of the metal being purchased shall also be maintained using the uniform terminology developed by the department. Such entries shall be made in chronological order of sale from day to day, as the business is transacted.

(c)

(1) Except as provided in subdivision (2) of this subsection, if it appears that the person is in lawful possession of the scrap metal and buying or otherwise receiving the metal from the seller would not violate this chapter, payment may take place by any method, on site, and at the time of the transaction.

(2) If the person is offering for sale scrap metal that in whole or in part consists of copper or an unattached catalytic converter, the transaction must occur in accordance with this subdivision.

(A)

(i) If the person selling scrap metal specified in subdivision (2) is selling as an agent or employee of a business, payment for such metal shall be made only by check or money order, mailed to the business address of the business for whom the employee or agent is employed, and the payee on the check shall be the name of the business.

(ii) Notwithstanding subdivision (i), a business that sells the type of scrap metal specified in subdivision (2) on a regular or frequent basis may annually preregister with a scrap metal dealer a list of employees who are authorized to sell on behalf of the business. A scrap metal dealer may pay an authorized, preregistered employee by any method, on site, and at the time of the transaction.

(B) If the person selling scrap metal specified in subdivision (2) is not an employee or agent of a business, payment for the scrap metal shall be by check, money order or voucher, at the option of the seller.

(i) If the seller elects payment by check or money order, it shall be mailed to the physical address provided on the driver license the seller used for identification. If the

seller did not produce a driver license with a physical address on it, payment shall be by voucher.

If a voucher is not redeemed by an authorized person within six (6) months of the date of the transaction, the voucher expires and may no longer be honored by the dealer after such expiration date. The dealer shall have one (1) year from the date of the voucher's expiration to transmit the transaction amount to the department for use in the administration of this chapter. Unredeemed voucher funds may be transmitted to the department in the same manner as dealer registration and renewal fees.

(ii) If the seller elects payment by voucher, or if payment must be by voucher, the dealer shall give the seller a voucher for the amount of metal purchased. Such voucher shall include the same information required under subsection (b)(2) of this section and the date on which the voucher can be redeemed. The voucher may only be redeemed by the person whose name appears on the voucher as the seller, or by such person's heirs or legal representative. No voucher may be redeemed by the voucher holder, or such holder's heirs or legal representative, sooner than five (5) days from the date of the scrap metal transaction.

(3) The department shall, by rule, establish a reasonable fee a dealer may charge the person selling the scrap metal for the dealer's

administrative costs of processing and issuing any check required by this part. Such fee may vary according to the dollar value of the purchase or the weight of the purchase but shall, in no event, exceed five dollars (\$5.00) per check.

(4) No dealer shall purchase or receive, or otherwise acquire, any scrap metal from a person under eighteen (18) years of age, whether the metal is acquired directly from, through or by the aid of such minor.

Section 62-9-105.

(a) As used in this section, "scrap metal transaction record" includes the information required to be obtained by § 62-9-103(b) and § 62-9-104(b)(2).

(b) A dealer shall be required to maintain each scrap metal transaction record for a period of three (3) years following the transaction.

(c)

(1) During the usual and customary business hours of a scrap metal dealer, a law enforcement officer shall have the right to inspect, without a warrant or subpoena, either of the following:

(A) Any purchased scrap metals in the possession of the dealer; and

(B) Any records required to be maintained by the dealer pursuant to this chapter.

(2) Notwithstanding subdivision (1), a search warrant or judicial subpoena may be executed at any time for inspection of the items set out in subdivision (1).

(3) All records required to be made available pursuant to subdivision (2) shall be maintained on the site where the transaction occurred for a period of three (3) years from the date of the transaction.

Section 62-9-106.

(a) Except as provided in subsection (b), it is an offense to knowingly sell or attempt to sell to a scrap metal dealer or for a scrap metal dealer to knowingly purchase or attempt to purchase the following types of scrap metal:

(1) Scrap metal marked with the initials of an electric, telephone, cable, or other public utility, or an electric or telephone cooperative;

(2) Utility access covers;

(3) Street light poles and fixtures;

(4) Road and bridge guard rails;

(5) Highway or street signs;

(6) Water meter covers;

(7) Traffic directional and control signs;

(8) Traffic light signals;

(9) Any scrap metal visibly marked or painted with the name of a government entity, business, company, or the name of the owner of such metal;

(10) Property owned by a telephone, cable, electric, water, or other utility, an electric or telephone cooperative, or a railroad, and marked or otherwise identified as such; and

(11) Unused and undamaged historical markers, or grave markers and vases.

(b) It is an exception to application of this section that the person attempting to sell the scrap metal provides reasonable, written documentation that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner. The dealer shall make a photo copy of any documentation provided pursuant to this subsection and retain the copy as part of the transaction record.

(c) In order for the provisions of this section to apply to items of scrap metal covered by subsection (a)(9), the scrap metal must be marked or painted in accordance with a uniform scrap metal marking system to be devised by the department as part of its rules and regulations. In devising the marking system, the department may consult with, or request recommendations from, other state or local government departments or private companies that currently mark property. The Commissioner may also appoint a committee to develop the uniform scrap metal marking system. If so appointed, the committee shall consist of at least five (5) members but no more than seven (7) members with at least one (1) member selected from each of the following groups: the scrap metal industry, the Tennessee Association of Chiefs of Police, the Tennessee Sheriffs' Association, the Home Builders Association of Tennessee and a member of the public who is not engaged in law enforcement, the scrap metal industry or the home building industry.

(d)

(1) A violation of this section is a Class A misdemeanor.

(2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for theft or any other applicable offense.

Section 62-9-107.

(a) It is an offense for a scrap metal dealer to pay cash to a person who presents an air conditioner evaporator coil or condenser, in whole or in part, for sale as scrap, or for such dealer to make payment of any kind at the time of the transaction.

(b) Scrap metal described in subsection (a) may only be sold for scrap by an authorized agent, representative or employee of one of the following:

(1) A licensed HVAC contractor who acquired the evaporator coil or condenser in the performance of contracting as defined in § 62-6-102;

(2) In a jurisdiction exempt from the requirements of title 68, chapter 120, by the provisions of § 68-120-101, a company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers;

(3) In a jurisdiction exempt from the requirements of title 68, chapter 120, by the provisions of § 68-120-101, where the exempt jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding a current business tax license, with a Class 4 classification, or a current sales tax identification number indicating the business as that of an HVAC installer or repairer; or

(4) In a jurisdiction not exempt from the requirements of title 68, chapter 120, a company holding a current business tax license, with a Class 4 classification, or a current sales tax identification number indicating the business as that of an HVAC installer or repairer.

(c) The person offering the air conditioner evaporator coil or condenser for sale as scrap shall have in such person's possession documentation that the company for whom it is being sold is a company described in subsection (b), and that the person selling the evaporator coil or condenser is an authorized agent, representative or employee of that company.

(d) Payment for scrap metal described in subsection (a) must be made by check or money order, mailed to the business address of the company for whom the metal is being sold, and the name of such company must be the payee on the check.

(e)

(1) A violation of this section is a Class A misdemeanor punishable by fine only.

(2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any applicable criminal offense.

Section 62-9-108.

(a) No scrap metal dealer shall knowingly purchase or possess a metal beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal.

(b)

(1) A violation of this section is a Class A misdemeanor punishable by fine only.

(2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any applicable criminal offense.

Section 62-9-109.

(a) Effective October 1, 2008, It is an offense for a person to engage in the business of buying scrap metal without registering as a scrap metal dealer with the department or falsely registering with the department as a dealer.

(b) A registered scrap metal dealer commits an offense who knowingly purchases scrap metal:

(1) In violation of this chapter;

(2) That was not the property of the seller and the seller did not have authorization to sell such metal; or

(3) That was unlawfully obtained by the seller.

(c) A first or second violation of subsection (a) or (b) is a Class A misdemeanor. A third or subsequent violation of subsection (a) or (b) is a Class E felony.

(d) Any other criminal violation of this chapter, the punishment for which is not otherwise specified, is a Class A misdemeanor.

(e)

(1) It is an offense for a person to sell or attempt to sell scrap metal knowing that the metal is stolen, whether by the person selling or by some other person.

(2) A violation of subsection (e) shall be punished as theft and graded according to the value of the metal sold or attempted to be sold as provided in § 39-14-105.

Section 62-9-110. The scrap metal registration of a person convicted of a violation of any provision of this chapter, or the criminal offense of theft, burglary or vandalism if such offense involved scrap metal, shall be immediately revoked by operation of law upon such conviction. A copy of the judgment of conviction shall be transmitted to the commissioner of the department by the law enforcement agency responsible for the conviction.

Section 62-9-111.

(a) Nothing contained in this chapter shall be construed to prevent a governmental entity, regulated landfill or solid waste processing facility owner from selling any scrap metal donated to it, or otherwise lawfully obtained by it without compensation.

(b) Payment for scrap metal sold by a governmental entity or regulated landfill owner shall be:

(1) Made by check or money order to the governmental entity, or the owner of the landfill or solid waste processing facility;

(2) Such check or money order shall be mailed to the business address of the governmental entity, or the owner of the landfill or solid waste processing facility; and

(3) The payee on the check shall be in the name of the governmental entity, or the owner of the landfill, or solid waste processing facility.

(c) Nothing contained in this chapter shall be construed to prohibit a governmental entity, regulated landfill, or solid waste processing facility owner from registering as a scrap metal dealer as provided in this chapter and coming within the provisions of § 62-9-112.

Section 62-9-112. The provisions of this chapter shall not apply to scrap metal transactions that take place between a scrap metal dealer registered pursuant to this chapter and another such registered dealer. Provided the scrap metal is lawfully obtained by the buyer and, at the time of the transaction, may lawfully be sold for scrap, the terms of sale between two (2) registered dealers shall be determined by the parties.

Section 62-9-113.

(a) In addition to the criminal penalties established for a violation of § 62-9-106, § 62-9-109(e), or a conviction for the criminal offense of theft, burglary or vandalism involving scrap metal, the items described in this section shall also be subject to seizure and forfeiture as provided in this section.

(b) Any conveyance, including a motor or other vehicle, aircraft, watercraft, or vessel used, or intended for use, in the commission of, to transport, conceal or store, or in any manner to facilitate the transportation, concealment or storage of scrap metal obtained in violation of an offense set out in subsection (a), shall be subject to seizure and forfeiture by any law enforcement officer authorized to effectuate an arrest.

(c) Any tool, machine, implement, instrument, or other equipment possessed with the intent to commit or assist in the commission of, employed in the commission of, or used in any manner to facilitate in the commission of the theft of scrap metal in violation of any offense set out in subsection (a), shall be

subject to seizure and forfeiture by any law enforcement officer authorized to effectuate an arrest.

(d) Any seizure and forfeiture conducted pursuant to this section shall be in accordance with the provisions of title 40, chapter 33, part 2.

SECTION 2. Tennessee Code Annotated, Section 40-35-114, is amended by adding the following new appropriately numbered subdivision:

() The offense involved the theft of property and, as a result of the manner in which the offense was committed, the victim suffered significant damage to other property belonging to the victim or for which the victim was responsible;

SECTION 3. Tennessee Code Annotated, Section 39-14-406, is amended by adding the following new subsection (e):

(e)

(1) A person also commits aggravated criminal trespass who trespasses upon a construction site, or property used or owned by a public or private utility or an electric or telephone cooperative, with the intent to steal, deface, destroy, tamper with, alter or remove any equipment, supplies or other property found on such site or property.

(2)

(A) In order for the provisions of this subsection to apply, the construction, utility, or electric or telephone cooperative property must be posted by use of a sign of a size that is plainly visible to the average person at all gates or entrances to the property and shall contain language substantially similar to the following:

UNLAWFUL ENTRY ON THIS PROPERTY CONSTITUTES THE
CRIMINAL OFFENSE OF AGGRAVATED CRIMINAL TRESPASS
AND IS PUNISHABLE BY IMPRISONMENT FOR UP TO ONE
YEAR AND A \$ 2,500 DOLLAR FINE.

(B) If the proof shows that the defendant entered the posted
property at some place other than a gate or entrance, it is not a defense
to this subsection that the defendant did not know that the property was
posted against trespass.

(3) Aggravated criminal trespass on a construction site is a Class A
misdemeanor.

SECTION 4.

(a) The department of commerce and insurance is authorized to promulgate
rules of public necessity to implement the provisions of this act.

(b) As part of the rules promulgated pursuant to this section, the commissioner of
the department of commerce and insurance shall develop uniform terminology to
describe the types of metal most commonly sold as scrap. The commissioner may
appoint a committee to develop the uniform terminology. The committee shall consist of
at least five (5) members but no more than seven (7) members with at least one (1)
member selected from each of the following groups: the scrap metal industry, the
Tennessee Association of Chiefs of Police, the Tennessee Sheriffs' Association, the
Home Builders Association of Tennessee and a member of the public who is not
engaged in law enforcement, the scrap metal industry or the home building industry.
The purpose of uniform terminology is to increase the chances of locating and
recovering stolen scrap metal by enabling law enforcement officials to describe the

stolen metal in their theft report in the same terms as the scrap metal industry uses to describe the same metal when it is brought in for sale.

(c)

(1) The department is directed to conduct a study of the cost and feasibility of compiling and implementing a "No Buy List" whereby persons who have are found to be in violation or convicted of a violation of title 62, chapter 9, or convicted of the criminal offense of theft, vandalism or burglary pertaining to scrap metal are compiled on a central list to be placed on the department's internet website and scrap metal dealers would be prohibited from purchasing scrap metal from anyone appearing on such list.

(2) The department shall report the results of the study to the speaker of the senate, speaker of the house of representatives, and the chairs of the senate and house of representatives finance, ways and means committees by January 31, 2009.

SECTION 5. For purposes of rulemaking by the commissioner of the department of commerce and insurance, this act shall take effect upon becoming a law, the public welfare requiring it. All sections of this act, except Section 62-9-102, requiring scrap metal dealers to register with the department, shall take effect on July 1, 2008, the public welfare requiring it. Section 62-9-102, requiring scrap metal dealers to register with the department, shall take effect on October 1, 2008, the public welfare requiring it.